

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 22, CALIFORNIA CODE OF REGULATIONS

Notice is hereby given that the Office of Environmental Health Hazard Assessment proposes to adopt Title 22, California Code of Regulations, Section 12903, which would set forth the requirements for "sixty-day notices" that are filed for purposes of initiating actions to enforce violations of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

PUBLIC PROCEEDINGS: A public hearing will be held on **August 23, 1996**, commencing at 10:00 a.m. in the Auditorium at 601 North 7th Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice.

Any written statements or arguments must be received by the Office of Environmental Health Hazard Assessment at the following address by 5:00 p.m. on **August 23, 1996**, which is hereby designated as the close of the written comment period:

Comments sent by mail or by fax should be addressed to:

Susan Luong
Office of Environmental Health Hazard Assessment
P. O. Box 942732
Sacramento, California 94234-7320
FAX: (916) 327-1097

Comments sent by courier should be delivered to:

Susan Luong
Office of Environmental Health Hazard Assessment
601 North 7th Street
Sacramento, California

It is requested but not required that written statements or arguments be submitted in triplicate.

CONTACT: Inquiries concerning the action described in this notice may be directed to William Soo Hoo, Chief Counsel, in writing at the address given above, or by telephone at (916) 322-0493.

INFORMATIVE DIGEST:

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65 (hereinafter referred to as “the Act”), requires businesses to provide clear and reasonable warnings prior to knowingly and intentionally exposing individuals to chemicals that have been listed by the State as known to cause cancer or reproductive toxicity, unless otherwise exempt [Health and Safety Code Section 25249.6, 25249.10]. The Act also prohibits businesses from knowingly discharging listed chemicals into sources of drinking water, unless otherwise exempt [Health and Safety Code Section 25249.5, 25249.9].

Violations of either the warning requirement or the discharge prohibition are enforced through civil lawsuits filed by the Attorney General, by district attorneys, by specified city attorneys, or by any person acting in the public interest [Health and Safety Code Section 25249.7]. Under the Act, private party actions cannot commence until sixty days after the private party has given notice to the Attorney General, the district attorney (and, in certain cases, the city attorney) having jurisdiction, and the alleged violator, and none of the public officials has commenced and is diligently prosecuting an action against the violation. The notice provided by the private party is commonly referred to as the “sixty-day notice.”

The Act contains no further provisions regarding what information the sixty-day notice must include, nor does it provide guidance on how the sixty-day period is calculated.

The Office of Environmental Health Hazard Assessment (OEHHA) proposes to adopt a regulation which would set forth the information requirements that a sixty-day notice must meet, describe the manner by which such notice must be served, and define what constitutes a “sixty-day” period. A private party shall be precluded from proceeding with an enforcement action pursuant to the Act, unless the standards in the proposed regulation have been satisfied.

AUTHORITY: Health and Safety Code Section 25249.12.

REFERENCE: Health and Safety Code Section 25249.7.

FISCAL IMPACT:

- A. Fiscal Effect on Local Government: No additional costs or savings.
- B. Fiscal Effect on State Government: No additional costs or savings.
- C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.
- D. Fiscal Effect on Private Persons or Businesses Directly Affected: No additional costs or savings.
- E. Fiscal Effect on Small Businesses: No additional costs or savings.

DETERMINATIONS:

- A. Mandate on local agencies or school districts: OEHHA has determined that the proposed regulation does not impose a mandate on local agencies or school districts, and therefore requires no State reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- B. “Plain English” requirements: OEHHA has determined that the proposed regulation does not affect small business for the following reasons: (1) Since Proposition 65 does not apply to businesses with fewer than ten employees, it is unlikely that “small business,” as defined in Government Code Section 11342(h), would be the subject of enforcement actions; the proposed regulation creates requirements relating to a notice alleging a violation of Proposition 65. (2) The proposed regulation creates requirements that an individual or organization seeking to enforce a violation of Proposition 65 must comply with in filing a notice; it does not impose any new or additional requirements that generally apply to small businesses.

Hence, the proposed regulation does not represent requirements that small business is legally required to comply with or to enforce the regulation; small business will not derive a benefit or a detriment from enforcement of the proposed regulation.

- C. Impact on California business enterprises and individuals: OEHHA has determined that the proposed regulation does not have an adverse economic impact on California business enterprises and individuals nor impose unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. The proposed regulation does not have an impact on the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses within the State, or the expansion of businesses currently doing business within the State.

The proposed regulation does not create additional requirements that must generally be complied with by entities or individuals doing business in California. The purpose of the proposed regulation is to specify the requirements which must be satisfied by a notice alleging a violation of Proposition 65. While these requirements must be complied with by individuals or entities who choose to seek to enforce violations of Proposition 65, they do not represent provisions that could adversely affect such individuals or entities.

- D. Impact on business: OEHHA has determined that the proposed regulation will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states. This determination is based upon the fact that the proposed regulation does not impose any additional requirements on businesses.

- E. Impact on housing costs: OEHHA has determined that the proposed regulation does not have a significant effect on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS: OEHHA has prepared and has available for public review an initial statement of reasons for the regulation, all the information upon which the regulation is based, and the text of the regulation. A copy of the initial statement of reasons and a copy of the text of the regulation is available upon request from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation.

ADDITIONAL COMMENTS: In accordance with Government Code Section 11346.5(a)(12), OEHHA must determine that no alternative it has considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

JAMES W. STRATTON, M.D., M.P.H.
Interim Director

Dated: June 25, 1996